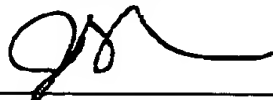


CERTIFICATE OF MAILING

I hereby certify that this paper r fee is being transmitted by facsimile to the person and number designated below and is addressed to the Commissioner of Patents and Trademarks, Washington DC 20231.



Judy Jarecki-Black, Ph.D., J.D.

PATENT**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of:)	Docket No:	AVI 007
Jeffrey C. Rapp)		
)		
Serial No:)	Art Unit:	1632
09/877,374)		
)		
Filing Date:)		
June 08, 2001)		
)		
Title: "Production of a Monoclonal)	ATTN: Christina Tartera Donnell, Esq.	
Antibody by a Transgenic Chicken")	Fax No: 703.308.6916	

FAX RECEIVED

Assistant Commissioner for Patents
Box DAC
Washington, D.C. 20231

JAN 22 2002

PETITIONS OFFICE

Sir:

PETITION FOR RECONSIDERATION TO CORRECT FILING RECEIPT

The Petitioner, and his attorney of record, wish to thank Ms. Donnell for her helpful comments regarding the above-captioned matter and respectfully request reconsideration of the Petition to Correct Filing Date, mailed 14 August 2001.

The above-captioned Application, and associated filing papers, were deposited in the Federal Express Box in the Olympic Street Post Office, Athens, Georgia at 4:42 PM on Friday, 08 June 2001, as indicated on the Certificate of Express Mailing accompanying the filing. The last pick-up for Express Mail at the Olympic Street Post Office is designated on the box as 6PM. All mail, express or otherwise, is transferred to Atlanta from Athens for processing. Apparently, Athens personnel failed to time and

Patent Application Serial No. 09/877,374

AVI 007

date stamp the Application mailing before transferring it to the Atlanta AMC for delivery. As a result, the Express Mailing label was stamped in Atlanta on Sunday, 10 June 2001 at 3:01 AM.

Attached to this Petition, please find the following:

- Copy of the Express Mail Label EL 846227475 US
- Letter from Athens Postmaster Deborah Phillips to Petitioner's Attorney
- Copy of Decision Dismissing Petition

Petitioner respectfully requests reconsideration of the Petition to Correct Filing Date. Should the Office have any questions regarding this request, the Office is invited to telephone the undersigned attorney.

If any fee or extension of time is required to obtain a corrected filing receipt, the undersigned hereby petitions the Commissioner to grant any necessary time extension and authorizes charging Deposit Account No. 501729 for any such fee not submitted herewith.

Respectfully submitted



Judy C. Jarecki-Black, Ph.D., J.D.
Registration No. 44,170

AviGenics, inc.
425 River Road
Athens, Georgia 30602-2771
(706) 227-1170 ext. 232
(706) 227-2180 (facsimile)

FAX RECEIVED
 JAN 22 2002
 PETITIONS OFFICE

EXPRESS MAIL UNITED STATES POSTAL SERVICE®		POST OFFICE TO ADDRESSEE	
ORIGIN (POSTAL USE ONLY)			
PO# <u>320</u> Date in <u>01/01/01</u> Time in <u>8:30</u> AM Weight <u>1</u> lbs. <u>4</u> ozs. <input type="checkbox"/> No Delivery <input type="checkbox"/> Weekend <input type="checkbox"/> Holiday	Day of Delivery <input checked="" type="checkbox"/> Next <input type="checkbox"/> Second <input type="checkbox"/> 12 Noon <input checked="" type="checkbox"/> 3 PM <input type="checkbox"/> Saturday <input type="checkbox"/> Sunday Initials Country Code Acceptance Certificate <u>HC</u> Total Postage & Fees <u>\$16.00</u>	Flat Rate Envelope <input type="checkbox"/> Postage \$ Return Receipt Fee COD Fee Insurance Fee	Flat Rate Envelope <input type="checkbox"/> Postage \$ Return Receipt Fee COD Fee Insurance Fee
DESTINATION (POSTAL USE ONLY) Method of Payment <u>X301304</u> Express Mail Order No.			
FROM: PLEASE PRINT AVIGENICS INC 425 RIVER RD ATHENS GA 30602-1506		TO: PLEASE PRINT Box Patent Application Asst. Comm. Patent Washington DC 20231	
PHONE <u>706.227.1170</u>		PHONE _____	
FOR PICKUP OR TRACKING CALL 1-800-222-1811 WWW.USPS.COM			

Customer Copy
 Label 11-F August 2000

AVIGENICS, INC
GEORGIA BIOBUSINESS CENTER
111 RIVERBEND ROAD
ATHENS, GA 30605

FAX RECEIVED

JAN 22 2002

PETITIONS OFFICE

FACSIMILE TRANSMITTAL SHEET

TO: CHRISTINA DONNELL

FROM: JUDY JARECKI-BLACK

COMPANY: USPTO OFFICE OF
PETITIONS

DATE: 22 JANUARY 2002

FAX NUMBER: 703.308.6916

TOTAL NO. OF PAGES INCLUDING COVER: 9

PHONE NUMBER: 703.306.5589

SENDER'S FAX NUMBER: 706-227-2180

RE: PETITION FOR RECONSIDERATION

SENDER'S PHONE NUMBER: 706-227-1170 X 232

☒ URGENT ☐ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE

NOTES/COMMENTS:

The telecopy transmission contains confidential information belonging to AviGenics, inc. and is intended solely for the recipient named below. AviGenics, inc. hereby expressly preserves and asserts all privileges and immunities applicable to this transmission. If you are not either the intended recipient or an agent or employee of the intended recipient, this transmission was sent to you in error. Any review, examination, use, disclosure, reproduction or distribution of this transmission or the information herein stated by anyone other than the intended recipient is **STRICTLY PROHIBITED**. If you have received this transmission in error, please read no further than the cover sheet and immediately telephone the sender to arrange for the return of this transmission to AviGenics, inc., which will bear all costs of return. Thank you.

Please see attached and call me at 706-227-1170 x232 if I can provide additional assistance. I will **NOT** be filing this Petition by mail unless you direct me otherwise. Thank you for your assistance.

POSTMASTER
ATHENS POST OFFICE



November 29, 2001

Dr. Judy Jarecki'Black
AviGenics Inc
111 Riverbend Drive
Athens GA 30605

FAX RECEIVED

JAN 22 2002

PETITIONS OFFICE

Dear Dr. Jarecki'Black:

It is my hope that this letter will be of assistance in explaining the circumstances of your Express Mail item.

Dr. Judy Jarecki'Black states that she placed Express Mail item #EL846227475US in the Express mailbox at the Olympic Drive office on June 8, 2001, but the mail-piece was not scanned accepted until 03:00 a.m. on June 10, 2001 at the Atlanta AMC 30320.

Based on the statement of Dr. Jarecki'Black of date and time of mailing, it appears that the mail-piece was dispatched from the Athens post office without being scanned into the system. The mail-piece was then scanned as accepted when found in the mail stream at the Atlanta AMC.

Sincerely,

A handwritten signature in cursive script that reads "Deborah J. Phillips".

Deborah J. Phillips
Postmaster

DJP:js

cc: File Copy



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov

Paper No. 3

Judy Jarecki-Black
AVIGENICS, INC.
425 River Road
Athens, GA 30602-2771

FAX RECEIVED

JAN 22 2002

PETITIONS OFFICE

In re Application of
Jeffrey C. Rapp
Application No. 09/877,374
Filed: June 10, 2001
Attorney Docket No. AVI-007

:
:
: DECISION DISMISSING
: PETITION
:

FAX RECEIVED

JAN 22 2002

PETITIONS OFFICE

This is a decision on the petition filed August 14, 2001, requesting that the above-identified application be accorded a filing date of June 8, 2001, rather than the presently accorded filing date of June 10, 2001.

Petitioner asserts that the filing date was erroneously recorded as evidenced by the Certificate of Express Mail on the Transmittal sheet filed with the original application papers. It is unclear from the petition if petitioner is alleging that there is a discrepancy between the filing date accorded by the United States Patent and Trademark Office (Office) and the date-in entered by the USPS (37 CFR 1.10(c)) or that the date-in was incorrectly entered by the USPS (37 CFR 1.10(d)). Because petitioner failed to provide the Office with a copy of the Express Mail label No. EL846227475US with the petition, the Office will treat this petition under both 37 CFR 1.10(c) and (d).

Paragraph (a) of 37 CFR 1.10 states that:

Any correspondence received by the Patent and Trademark Office (Office) that was delivered by the "Express Mail Post Office to Addressee" service of the United States Postal Service (USPS) will be considered filed in the Office on the date of deposit with the USPS. The date of deposit with the USPS is shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation. If the USPS deposit date cannot be determined, the correspondence will be accorded the Office receipt date as the filing date. See §1.6(a) (Emphasis added).

Consideration under 37 CFR 1.10(c)

Paragraph (c) of 37 CFR 1.10 states that:

Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show a discrepancy between the filing date accorded by the Office to the correspondence and the date

Application No. 09/877,374

Page 2

of deposit as shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation, may petition the Commissioner to accord the correspondence a filing date as of the "date-in" on the "Express Mail" mailing label or other official USPS notation, provided that:

- (1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date other than the USPS deposit date;
- (2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail;" and
- (3) The petition includes a true copy of the "Express Mail" mailing label showing the "date-in," and of any other official notation by the USPS relied upon to show the date of deposit.

The present petition lacks the showing required by item (3) above.

Petitioner did not submit a true copy of the "Express Mail" mailing label No. EL846227475US, showing the "date-in" of June 8, 2001, or any other official notation by the USPS to show the date of deposit.

Consideration under 37 CFR 1.10(d)

Paragraph (d) of 37 CFR 1.10 states that:

Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS was incorrectly entered or omitted by the USPS, may petition the Commissioner to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS provided that:

- (1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect entry by the USPS;
- (2) The number of the "Express Mail" mailing label was placed on the paper(s) and fee(s) that constitute the correspondence prior to the original mailing by "Express Mail;" and
- (3) The petition includes a showing, which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day. Any showing pursuant to this paragraph must be corroborated by evidence from the USPS or that

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Page 3

came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS.

The present petition lacks the showing required by item (3) above.

A grantable petition under 37 CFR 1.10(d) must include "a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in 'Express Mail Post Office to Addressee' service prior to the last scheduled pickup for that day." In addition, the showing "must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the 'Express Mail Post Office to Addressee' service of the USPS." Evidence from the USPS may be, for example, the Express Mail Corporate Account Mailing Statement or a statement by an appropriate official of the USPS that according to a USPS record the "date-in" on petitioner's Express Mail receipt is erroneous, accompanied by a copy of the relevant USPS record. Evidence that came into being within one day after the deposit of the correspondence as Express Mail may be, for example, a log book which contains information such as the Express Mail label number; the application number; attorney docket number or other such file identification number; the place, date and time of deposit; the time of the last scheduled pick-up for that date and place of deposit; the depositor's initials or signature; and the date and time of the log book entry.

As previously stated, petitioner did not supply a copy of the Express Mail label No. EL846227475US. Moreover, the USPTO's USPS Express Mail Information Database indicates that a package bearing Express Mail label No. EL846227475US was accepted by the USPS on June 10, 2001 at 3:00 AM. The Office notes that petitioner bears the burden to prove that the "date-in" was incorrectly entered on the "Express Mail" mailing label. Petitioner has not provided any direct evidence of the delivery of the present application to the USPS on June 8, 2001. Absent a true copy of the "Express Mail" mailing label or other evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail" service, which corroborates the allegation that the application was, in fact, deposited with the USPS on June 8, 2001, before the last scheduled pick-up for that day, the application will be accorded the date indicated in the Express Mail Database as the date the application was accepted by the USPS (June 10, 2001).

Accordingly, the petition is dismissed.

Any request for reconsideration must be filed within TWO (2) MONTHS of the date of this decision in order to be considered timely. See 37 CFR 1.181(f).

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Page 4

Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
Box DAC
Washington, D.C. 20231

By FAX: (703) 308-6916
Attn: Office of Petitions

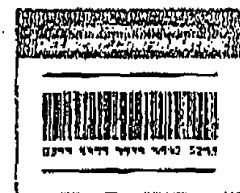
By hand: Crystal Plaza Four, Suite 3C23
2201 South Clark Place
Arlington, VA 22202

This file is being forwarded to Technology Center 1600 for examination in due course with the presently accorded filing date of June 10, 2001.

Telephone inquiries regarding this matter should be directed to the undersigned at (703) 306-5589.

Christina Tartera Donnell
Christina Tartera Donnell
Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

Enclosure: USPTO's USPS Express Mail Information Database

USPTO's USPS Express Mail Information DatabaseExpress Mail Number: **EL846227475US**Origin ZIP: **30320**Weight: **01 lbs 04 ozs**Postage Paid: **\$016.00**Date and Time* Package was accepted by USPS: **06/10/2001 03:00 am**Attempted Delivery Date and Time: **//**Actual Delivery Date and Time: **06/11/2001 06:40 am**

*Also referred to as "Date In"



Friday, November 16, 2001 08:48 AM

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JAN 22 2002
PETITIONS OFFICE

03 308 6916

*** RX REPORT ***

RECEPTION OK

TX/RX NO	9340
CONNECTION TEL	7062272180
CONNECTION ID	
START TIME	01/22(TU)12:34
USAGE TIME	03'16"
PGS.	10
RESULT	OK